



Department of Toxic Substances Control



Winston H. Hickox
Agency Secretary
California Environmental
Protection Agency

Edwin F. Lowry, Director
1001 "I" Street, 25th Floor
P.O. Box 806
Sacramento, California 95812-0806

Gray Davis
Governor

TITLE 22

45-DAY PUBLIC NOTICE AND COMMENT PERIOD

PRIVATE SITE MANAGEMENT PERFORMANCE STANDARDS

Department Reference Number: R-96-01

NOTICE IS HEREBY GIVEN that the Department of Toxic Substances Control (DTSC) proposes to amend title 22, division 4.5, chapter 51 of the California Code of Regulations, adding sections 69000 through 69013. These regulations would establish performance standards for private site managers and private site management team members pursuant to DTSC's private site management program. These regulations conform to the statutory provision for establishing performance standards for private site managers, who must be Registered Environmental Assessors Class II (REA IIs) with the Office of Environmental Health Hazard Assessment (OEHHA).

The Private Site Management Program is a voluntary program created by Assembly Bill No. 1876 (Stats. 1995, ch. 820). This program is designed to allow the private sector to select a private site manager, to have limited State involvement at a low-threat hazardous substance release site, and to obtain a State designation that no further action is required or a State certification that the site has been remediated.

PUBLIC HEARING AND WRITTEN COMMENT PERIOD

DTSC will hold a public hearing on the proposed regulations at 10:00 a.m. on **July 22, 2002**, in the Sierra Hearing Room, 2nd Floor, 1001 "I" Street, Sacramento, California, at which time any person may present statements or arguments orally or in writing, relevant to this proposal. Please submit written comments to the contact person listed at the end of this notice. Written comments on the rulemaking submitted no later than 5:00 p.m. on **July 22, 2002** will be considered.

Representatives of DTSC will preside at the hearing. Persons who wish to speak are requested to register before the hearing. Pre-hearing registration will be conducted at the location of the hearing from 9:30 a.m. to 10:00 a.m. Registered persons will be heard in the order of their registration. Any other person wishing to speak at the hearing will be afforded the opportunity after the registered persons have been heard.

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption.

For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at www.dtsc.ca.gov.

AUTHORITY AND REFERENCE

DTSC proposes to add sections 69000 through 69013 to title 22, division 4.5, chapter 51, California Code of Regulations, pursuant to the authority in sections 25351.5 and 25395.15 of the Health and Safety Code. The proposed regulations would implement, interpret, or make specific sections 25395.1 through 25395.15 of the Health and Safety Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking affects title 22, division 4.5, chapter 51, California Code of Regulations, by adding new sections 69000 through 69013. These proposed regulations would establish minimum performance standards for private site managers and members of private site management teams who would be authorized to conduct site investigations and removal and remedial actions at low-threat hazardous substance release sites with limited oversight by DTSC. The investigations would have to be performed in accordance with the Preliminary Endangerment Assessment Guidance Manual adopted by DTSC in January 1994, and reprinted with minor changes in June 1999, which is incorporated by reference.

Prior to the creation of the Private Site Management Program (Stats. 1995, ch. 820), the private sector frequently conducted site cleanups of low-threat sites without any governmental oversight. The project proponents (property owners, responsible parties, and prospective purchasers) then found that financial institutions were often reluctant to either finance redevelopment efforts or make loans using these properties as collateral. The Private Site Management Program is a voluntary program designed to allow the private sector to select a private site manager, to streamline the level of State involvement at a low-threat hazardous substance release site, and obtain a State designation that no further action is required or a State certification that the site has been fully remediated. DTSC is responsible for developing performance standards to ensure that site cleanups conducted by private site managers are protective of public health and the environment.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

DTSC has found this rulemaking project to be exempt under CEQA. A draft Notice of Exemption (NOE) is available for review with the rulemaking file and the NOE will be filed with the State Clearinghouse when the regulations are adopted.

PEER REVIEW

Under the provisions of Health and Safety Code section 57004, peer review is not required because the proposed regulations do not establish a regulatory level, standard or other requirement subject to scientific peer review.

BUSINESS REPORT

DTSC has determined that this rulemaking will not require businesses to write a new report, as defined by Government Code section 11346.3(c).

FISCAL IMPACT ESTIMATES

Mandates on Local Agencies and School Districts: DTSC has made a preliminary determination that adoption of these regulations will create no new local mandates.

Estimate of Potential Cost or Savings to Local Agencies Subject to

Reimbursement: These regulations may impact local governments to the extent that they need to remediate a low-threat hazardous substance release site. If such a situation existed, the local government could elect to hire a private site manager and participate in the Private Site Management Program. It is assumed that local governments may elect to participate in the program if it is cost-effective or if it provides an economic benefit, e.g., State certification.

Cost or Savings to Any State Agency: If the volume of Private Site Management Program projects is large, DTSC may need to request additional reimbursement positions to have sufficient staff and authority to oversee Private Site Management Program projects.

Cost or Savings in Federal Funding to the State: DTSC has made a preliminary determination that the proposed regulations will have no impact on federal revenue or costs.

Effect on Housing Costs: DTSC has made an initial determination that there will be no impact on housing costs.

Cost Impacts on Representative Private Persons or Businesses: DTSC is not aware of any cost impacts that a representative private person or business would incur in reasonable compliance with the proposed action.

Significant Statewide Adverse Economic Impact on Businesses: DTSC has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability to compete with businesses in other states.

Assessment Statement:

(A) Creation or elimination of jobs within California – DTSC has made a

preliminary determination that this program may promote job opportunities if businesses opt to use this voluntary program. No jobs will be eliminated in California as a result of the proposed regulations.

(B) Creation of new businesses or elimination of existing businesses within California – DTSC has made a preliminary determination that this program may promote the development of new businesses if the environmental consulting industry views the program as a business opportunity. No businesses will be eliminated in California as a result of the proposed regulations.

(C) Expansion of businesses currently doing business in California - DTSC has made a preliminary determination that this program may expand environmental consulting businesses if this industry views the Private Site Management Program as a business opportunity as a result of the proposed regulations.

Effect on Small Businesses: DTSC has determined that provisions of this rulemaking may have an effect on small businesses.

CONSIDERATION OF ALTERNATIVES

DTSC has determined that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of DTSC would be more effective in carrying out the purpose for which the regulation is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. DTSC invites interested persons to present arguments, with respect to the various options, at the scheduled hearing, or during the written comment period.

AVAILABILITY OF TEXT OF REGULATIONS AND STATEMENT OF REASONS

Copies of the Notice, Initial Statement of Reasons and the text of the proposed regulations are posted to DTSC's Internet site at <http://www.dtsc.ca.gov> or may be obtained from Ms. Joan Ferber of DTSC, Environmental Analysis and Regulations Section as specified below. The information upon which DTSC relied is also available at the address listed below.

POST-HEARING CHANGES

After the close of the comment period, DTSC may adopt the proposed regulations. If substantial changes are made, the modified text will be made available for comment for at least 15 days prior to adoption. Only persons who request the specific proposed regulations, attend the hearing, or provide written comments on these specific regulations will be sent a copy of the modified text, if substantive changes are made.

Once DTSC decides to adopt a regulation, DTSC prepares a Final Statement of Reasons that updates the Initial Statement of Reasons, summarizes how DTSC addressed comments and includes other materials, as required by Government Code section 11346.9. Once prepared, copies of the Final Statement of Reasons may be obtained from Ms. Joan Ferber at the address listed below.

A copy of the Final Statement of Reasons will also be posted on DTSC's web site at <http://www.dtsc.ca.gov>, along with the date the rulemaking is filed with the Secretary of State and the effective date of the regulations.

CONTACT PERSONS

Inquires regarding technical aspects of the proposed regulations or CEQA documents may be directed to Kathleen Hartshorne of DTSC at (916) 323-3395 or, if unavailable, Laurie Grouard of DTSC at (916) 323-3394. However, such oral inquiries are not part of the rulemaking record.

Statements, arguments, or contentions regarding rulemaking and/or supporting documents must be submitted in writing or may be presented orally or in writing at the public hearing in order for them to be considered by DTSC before it adopts, amends, or repeals these regulations. To be included in the mailing list for this regulation package and to receive updates of this rulemaking, please leave a message on the DTSC mailing list phone line at (916) 324-9933 or e-mail: regs@dtsc.ca.gov.

Please direct all written comments, procedural inquiries and requests for documents by mail, e-mail, or fax to:

Ms. Joan Ferber, Regulations Coordinator
Environmental Analysis and Regulations Section
Department of Toxic Substances Control

Mailing Address: P.O. Box 806
Sacramento, CA 95812-0806

E-mail Address: regs@dtsc.ca.gov

Fax Number: (916) 323-3215

Ms. Ferber's phone number is (916) 322-6409. If Ms. Ferber is unavailable, please call Ms. Nicole Sotak at (916) 327-4508 or Mr. James McRitchie at (916) 327-8642.